

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

TARONTAE D. JACKSON,  
Plaintiff,  
v.  
PERRY RUSSELL,  
Defendant.

Case No.: 2:22-cv-01289-JAD-VCF

## ORDER

## I. DISCUSSION

10 On November 1, 2022, the Court issued an order screening Plaintiff's first  
11 amended complaint ("FAC") under 28 U.S.C. § 1915A. (ECF No. 5.) The Court dismissed  
12 the FAC without prejudice and with leave to file a second amended complaint. (*Id.*)  
13 Plaintiff has not filed a second amended complaint. However, Plaintiff has filed a motion  
14 requesting an application to proceed *in forma pauperis*, and a motion for appointment of  
15 counsel. (ECF Nos. 6, 7.) In light of Plaintiff's continued engagement in this case, the  
16 Court will grant Plaintiff an extension until February 17, 2023, to file a second amended  
17 complaint. If Plaintiff fails to file a second amended complaint by February 17, 2023, this  
18 case will be subject to dismissal without prejudice. The court will now consider Plaintiff's  
19 motions.

**A. ECF No. 6**

21 Plaintiff has filed a motion in which he appears to be requesting an application to  
22 proceed *in forma pauperis* for a different case. (ECF No. 6.) To the extent that Plaintiff  
23 is requesting something for a different case, he must file a motion in that case, not in this  
24 case. Plaintiff has already filed a complete application to proceed *in forma pauperis* in  
25 this case.

26 The motion also appears to request a status update on Plaintiff's first amended  
27 complaint. However, the Court has already accepted and screened Plaintiff's first  
28 amended complaint. Accordingly, Plaintiff's motion is denied. However, the Court will

1 direct the Clerk of the Court to resend the Court's previous screening order in case  
2 Plaintiff did not receive the screening order.

3 **B. ECF No. 7**

4 Plaintiff has filed a motion for appointment of counsel. (ECF No. 7.) A litigant does  
5 not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims.  
6 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.  
7 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to  
8 afford counsel.” However, the court will appoint counsel for indigent civil litigants only in  
9 “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983  
10 action). “When determining whether ‘exceptional circumstances’ exist, a court must  
11 consider ‘the likelihood of success on the merits as well as the ability of the petitioner to  
12 articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Id.*  
13 “Neither of these considerations is dispositive and instead must be viewed together.” *Id.*

14 The Court has dismissed Plaintiff’s first amended complaint. Because Plaintiff has  
15 not yet filed a second amended complaint, the Court cannot properly analyze the  
16 likelihood of success or the complexity of the legal issues at play in any potential second  
17 amended complaint. Accordingly, the Court will not consider Plaintiff’s motion for  
18 appointment of counsel until after Plaintiff files a second amended complaint.

19 **II. CONCLUSION**

20 It is therefore ordered that Plaintiff’s motion for an application to proceed *in forma*  
21 *pauperis*, and for a status update, (ECF No. 6) is DENIED.

22 It is further ordered that the Court will not consider Plaintiff’s motion for  
23 appointment of counsel (ECF No. 7) until after Plaintiff files a second amended complaint.

24 It is further ordered that the Court extends the deadline for Plaintiff to file any  
25 second amended complaint to February 17, 2023. Plaintiff is cautioned that this action  
26 will be subject to dismissal without prejudice if Plaintiff fails to timely comply with this  
27 order. A dismissal without prejudice allows Plaintiff to refile the case with the Court, under  
28 a new case number, when Plaintiff can file a signed complaint.

1 The Clerk of the Court is directed to send Plaintiff the approved form for filing a §  
2 1983 complaint, instructions for the same, and a copy of his first amended complaint (ECF  
3 No. 3.)

4 DATED THIS 17th day of January 2023.

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8 UNITED STATES MAGISTRATE JUDGE  
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